[ORIGINAL CIVIL JURISDICTION]

CHOP YOON KEE HANG
ALIAS CHOP YONG KEE HONG

vs.

MOTOR UNION INSURANCE CO. LTD.

[SINGAPORE SUIT No. 498 OF 1931]

Costs— taxation— party and party—getting up fee—action not set down for trial—Civil Procedure Code Ss. 1301, 1312 and 1326.

Where an action is not set down for trial, no special getting up fee is allowed on taxation, but the Registrar has discretion to allow a larger fee for instructions for Defence in cases which involve special work and a higher degree of skill.

All just and reasonable charges are to be allowed for procuring the evidence and the attendance of witnesses, even before notice of trial of an action is given.

Summons taken out by the defendants under Section 1326 of the Civil Procedure Code for an order to review the taxation of their bill of costs in regard to an item concerning the getting up fee charged therein.

The material circumstances giving rise to the application and the nature of objection taken by the defendants appear by the Judgment below.

Page, for the defendants.

Cur. Ad. Vult.

MURISON, C. J. This is an application by the Defendants under section 1326 of the Civil Procedure Code asking that their objections to the taxation of costs be allowed and that it be referred back to the Registrar to vary his certificate accordingly.

The Plaintiffs were export and import merchants in Singapore. They had insured certain goods with the Defendants' firm for $28,000. These goods were badly damaged and were eventually sold for $118. The claim was for the difference.

The policy was dated 30th December, 1930.

The writ was issued on the 30th April, 1931.

The Statement of Claim was filed on the 19th November, 1931 and the Statement of Defence 8th December, 1931.

The Plaintiffs' solicitor obtained the discharge on the 12th February, 1932.

Eventually upon an application of the 25th April, 1932 the action was dismissed for want of prosecution with costs. The action was never set down for trial.

In the taxation of the bill of costs item 16 was as follows:—

> "Very lengthy instructions, numerous attendances on several witnesses and experts taking down their statements, perusing reports of experts and other documents, looking up numerous authorities and generally getting up the Defence——$1,000."

The Registrar reduced this figure to $200 and the Defendants on the 10th May asked him to review his decision. He did so and confirmed it.

The present summons is against this confirmation.

Mr. Page for the Defendants contends that he was put to great trouble in preparing his case. He had, he says, to interview the Export and Import Department, the Master Attendant, the officers of the steamship company and the Government Analyst at Singapore. He claims therefore that he should be allowed these expenses in his getting up fee.

The formal objection is as follows:—

> "It is submitted that the amount allowed by the Registrar is not commensurate with the amount of work involved as the case raised very numerous points of law and technicalities including very lengthy instructions, numerous attendances on several witnesses and experts taking down their statements, perusing reports of experts and other documents, looking up numerous authorities and generally getting up the defence. The case was also a very intricate one and called for a great amount of labour, time and consideration. The fact that the action was dismissed for want of prosecution is quite immaterial."

The Registrar held that he never on principle allows a getting up fee where the case is not set down for trial. To do so would, he says, be tantamount to applying the getting up fee to the pleadings in an action and not for trial. It is

not, he says, until a case is fixed for trial on a specified date that counsel proceed to get it up in detail. He allowed $200 for instructions for defence. The ordinary fee is $6/-

I have consulted with my brother Terrell and he informs me that the regular practice in Penang is as stated by the Registrar.

The Registrar in this case, therefore, exercised his discretion under section 1312 of the Civil Procedure Code in allowing a higher fee for "Instructions for the Defence" than he otherwise would have done; and this extra fee, in his opinion, compensated Mr. Page for the special efforts which he has detailed in the Bill and in his objections.

This would seem to close the matter, but it appears that section 1301 of the Code has not been considered in the taxation probably because it was not put forward by Mr. Page.

Section 1301 is as follows:—

> "As to evidence such just and reasonable charge and expenses as appear to have been properly incurred in procuring evidence and the attendance of witnesses shall be allowed, if not charged and allowed for under the general fee No. 79 in Schedule C."

This section appears to contemplate a trial, for the attendance of witnesses is mentioned but it must, I think, include cases where there is no trial. Its provisions correspond to R.S.C. Order 65 r. 27 (29)—Annual Practice p. 1459. That Regulation provides that "all such costs, charges and expenses as shall appear to him to have been necessary or proper for defending the rights of any party shall be allowed. Now under this Regulation it was held in *Windham* v. *Bainton* (1888) 21 Q.B.D. 199 that costs of procuring evidence may be allowed even if there has been no notice of trial. But if a party wishes to proceed under section 1301 (or Order 65 r. 27 (29) he must, according to the ruling of Swinfen Eady L.J. in *Slingsby* v. *The Attorney-General* (1918) 119 L.T. 104 state "the length of the documents perused, the names of the witnesses who have attended, the places to which journeys have been made, with the time occupied in each, and the amount of the travelling expenses."

It is possible that the Registrar may wish to re-consider his taxation in view of section 1301 and the cases I have cited, and I remit this case back to him to consider that point. If he adheres to his previous decision, the taxation is reduced to a question of *quantum* from which any further appeal would be very difficult.

Solicitors for the Defendants—

Allen & Gledhill.

[APPELLATE CIVIL JURISDICTION]

TAN HONG TEE & CO.

vs.

P. & O. BANKING CORPORATION LTD.

[SINGAPORE SUIT No. 329 OF 1931]

[SINGAPORE APPEAL No. 3 OF 1932]

Contract—deposit of title deeds—payment to redeem—want of mutuality—failure of consideration—non-performance of condition—recovery of money paid under mistake.

Where the plaintiffs paid money to the defendants with a view to getting back certain title deeds deposited with the latter by a third party without the authority of the plaintiffs, and the defendants misunderstood the purpose for which the payment was made.

Held, (reversing the Judgment of Sproule, J.), that as there was no mutual agreement between the parties and hence no contract, the plaintiffs were entitled to recover the money paid by them under a mistake of fact.

This was a claim by the Plaintiffs against the defendants for the return of certain title deeds of land at Chua Chu Kang Road belonging to one of the partners of the plaintiff firm. The title deeds in question were originally deposited by the Plaintiffs with Rose, Macphail & Penman Ltd. who subsequently deposited them with the defendants as security on their account without the authority of the plaintiffs. Under protest the plaintiffs gave special authority in writing for the deposit of the the deeds with the defendants. Later the defendants by their accountant agreed to return the deeds to the Plaintiffs upon their payment of $5,000 against the account of Rose, Macphail & Penman Ltd. On the 25th July the plaintiffs duly paid the sum of $5,000 to the defendants but failed to recover the title deeds. The full facts appear by the Judgment of Murison, C. J.

This action was tried before Sproule, J. on the 25th November 1931 and on the 30th